

BUREAU OF LAW

MEMORANDUM

Corporation Not Determined.

A-2

Dancil Realty, Inc.

TO: Commissioners Murphy, Macduff and Conlon

FROM: E. H. Best, Counsel

SUBJECT: Dancil Realty, Inc.

The primary issue presented in this matter is whether a note and a mortgage executed by the petitioner is a long term obligation in computing the taxpayer's franchise tax measured by a business and investment capital. The Hearing Officer, Mr. John J. Genovick of the Corporation Tax Bureau has prepared a proposed determination disallowing a deduction of the outstanding balance of the note and mortgage hereinafter described from business capital on the grounds that the taxpayer was personally obligated on the debt and that the debt was a long term obligation.

The facts disclose that on October 25, 1963 the petitioner executed a purchase money note and mortgage to the Jamaica Savings Bank in the sum of \$80,000.00. The note provides for monthly payments amortizing the obligation with the final payment to be made on November 1, 1973. The taxpayer contends that because the note is due and payable immediately upon breach of any provision of the agreement, the obligation is a short term liability.

Since the taxpayer is personally liable on the note, it cannot include only the value of its equity in the property subject to the mortgage in question. (See 20 USTC ¶ 13,321(b)) Section 200(7) of the Tax Law provides that liabilities which are payable by their terms on demand or within one year from the date incurred are deductible from assets in arriving at business capital. Since the terms of the note and mortgage do not provide for payments on demand or within one year from the date the obligation was incurred, I am of the opinion that the statement of audit charges and the proposed determination affirming such statement is correct.

If you agree with me, kindly sign the proposed determination and return the file to me for disposition.

January 16, 1967

EHB:pg

Enc.

/s/

E. H. BEST

Counsel

STATE OF NEW YORK

THE STATE TAX COMMISSION

In the Matter of the Petition

of

DANIEL REALTY, INC.

**For redetermination of a deficiency
or for refund of franchise tax under
Article 9-A of the Tax Law for the
privilege year ended December 31,
1964.**

Daniel Realty, Inc., having filed a petition for redetermination of a deficiency or for refund of franchise tax under Article 9-A of the Tax Law for the privilege year ended December 31, 1964, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N. Y. on October 19, 1964 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Irvin Bornstein, CPA, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer was incorporated under the laws of New York State on August 8, 1963; that it filed a return for the privilege year ended December 31, 1964 and paid a minimum tax of \$25.00; that on the basis of information submitted, the Department of Taxation and Finance issued a statement of audit adjustment on October 15, 1965 computing an added tax of \$86.24 based on business capital and issued a notice of deficiency therefor as follows:

Privilege Year ended December 31, 1964

Business Assets	\$116,180.00
Less Current Liabilities	4,941.00
Business Capital	111,239.00
Tax at one mill	111.24
Tax Per Return	25.00
Deficiency	\$ 86.24

(2) That the taxpayer conveyed a real estate mortgage as security and signed a mortgage note dated October 25, 1963 in the face amount of \$80,000, with interest at six per cent per annum, payable to the Jamaica Savings Bank, providing for repayment in monthly installments of \$667.00 commencing on December 1, 1963, and a like sum on the first day of each month thereafter until November 1, 1973, when the unpaid balance becomes due and payable.

(3) That section 208.7 of Article 9-A of the Tax Law provides in part that "The term 'business capital' means all assets, other than subsidiary capital, investment capital and stock issued by the taxpayer, less liabilities not deducted from subsidiary or investment capital which are payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the report, * * * *."

(4) That section 3.32 (b) of Ruling of the State Tax Commission dated March 15, 1962, in effect through the calendar year 1964, provides in part that "where the taxpayer owns property subject to a debt for which the taxpayer is not personally liable, only the taxpayer's equity in the property, over and above the amount of such debt, is included in business capital."

Based upon the foregoing findings and all of the evidence presented, the State Tax Commission hereby
DECIDES:

(A) That the mortgage note was not payable on demand or within one year from the date incurred and was outstanding for more than one year as of the close of the taxable period on December 31, 1964 and therefore does not qualify as a deduction in computing business capital.

(B) That the taxpayer was personally liable on the mortgage note and the full value of the property, instead of taxpayer's equity therein, must be included in computing business capital.

(C) That accordingly, the statement of audit adjustment and notice of deficiency imposing additional franchise tax together with interest against the taxpayer are correct; that the same do not include any taxes or other charges which are not legally due and that the taxpayer's petition for redetermination of a deficiency or for refund be and the same is hereby dismissed.

DATED: Albany, New York

this 30th day of January 1967

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

COMMISSIONER

/s/

JAMES R. MACDUFF

COMMISSIONER

/s/

WALTER MACLYN CONLON

COMMISSIONER